

# Fiscal Note

*Fiscal Services Division*



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**HF 517** – Administrative Rules Overreach (LSB 1642HV)

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Fiscal Note Version – New

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## **Description**

**House File 517** restricts State agencies from enacting administrative rules or policies that exceed the federal statutes, regulations, or policies that they implement, except as specifically allowed by State law. Any portion of existing rules or policies that exceed specific federal requirements is automatically superseded by the federal requirements.

## **Background**

State agencies have the authority to propose and implement administrative rules and policies to implement State and Federal law. The Iowa Administrative Procedure Act of 1975, [Iowa Code 17A](#), articulates the Iowa agency rulemaking process. Rules may not be unreasonable, arbitrary, capricious, or otherwise beyond the authority of an agency. This Bill adds language that restricts agencies from exceeding the federal statutes, regulations, or policies that they implement, except as allowed by State law.

## **Assumptions**

It is difficult for agencies to determine the exact number of rules and policies impacted by this Bill. However, information provided by agencies allows for the identification of categories of potential fiscal impact. These categories include but may not be limited to:

### **Administrative Rulemaking Process**

The Administrative Rules Review Committee (ARRC) may need to take action to determine a uniform process for agencies to follow when reviewing existing and proposed rules for compliance with minimum federal requirements, especially when the federal requirements are broad, permissive, or otherwise vague. While this Bill states that existing rules that exceed federal requirements are automatically superseded by the federal requirements, a formal review of existing agency rules for this potential conflict will ensure that rules are being consistently applied to all impacted entities.

### **Changes to Existing Benefits, Funding Distribution Formulas, and Fines/Penalties**

Some agencies implement federal programs that allow broad agency discretion or optional methods of implementation. Under this Bill, these instances would require the General Assembly to determine the course of action. For programs such as Medicaid, the General Assembly will experience a significant increase in necessary legislative action to keep the program running, including but not limited to rate setting, diagnosis and procedure code changes, waiver programs that are not specified in federal policy, requirements to provide services deemed necessary but not expressly stated in federal or state law, and other examples where the State is provided broad authority to implement the program.

Another example may include federal funding programs that do not require a local match but the State agency has included a local match requirement in an effort to distribute funds more widely. Without express permission from the General Assembly, such action will not be allowed. There may also be instances when the State may experience a decrease in revenue due to a reduction or elimination of fees or penalties associated with rules that are no longer enforceable.

In the instances noted above, the costs to the State and other entities may be reduced as optional programming may not be implemented; however, costs may also be incurred as decision making timelines may be extended and funding opportunities may be lost during the legislative interim. This Bill does not preclude the General Assembly from taking actions to provide permission to State entities to continue specified benefits or services that exceed federal requirements, or to enact a process to manage instances when federal time limitations may not permit a department to receive permission from the General Assembly during the legislative interim to implement a rule or policy. If enacted, the General Assembly may wish to receive a list and description of any anticipated permissive actions needed during the legislative interim and ensure that necessary precautions are in place to avoid potentially costly delays or missed funding opportunities.

#### ***Vague or Broad Federal Authority***

Interpretation when federal law provides only vague or broad authority may result in a greater number of appeals or court action. In such instances, it is conceivable that private or other governmental entities may believe that a State agency is exceeding its authority or, conversely, entities may believe a State agency can regulate, fund, or monitor a program or service beyond actions specified in agency rules or policy. While difficult to estimate, appeals and legal challenges have the potential to be costly to the State.

#### ***Agency Review and Compliance***

Agencies will need to dedicate staff time to the review of existing rules to ensure compliance with this Bill and to implement any processes determined by the ARRC. Staff time may be significant for agencies that implement a large volume of rules, such as the Department of Human Services (DHS), and will include program administrators, managers, and administrative rules authors and reviewers. It is difficult to estimate the staff hours that may need to temporarily shift from other duties or contract/hire for this purpose. There is a potential for long-term savings resulting from decreased staff time necessary to write, review, and implement rules that are no longer permitted under this Bill. One-time software programming costs for financial accounting changes is expected.

#### ***Local Governments***

While difficult to estimate, there may be instances when local governments experience cost savings as a result of this Bill, such as in the area of environmental or historic preservation rules and policies.

#### **Fiscal Impact**

This Bill will impact all State agencies, but the fiscal impact to the State General Fund cannot be determined. Agencies that experience a large volume of rule writing and changes on a regular basis, such as the DHS, will be impacted the most. All agencies will need to devote staff resources to ensure existing rules are in compliance with this Bill. The General Assembly is likely to experience an increase in legislative action necessary to expressly authorize implementation of broad or vague federal authority, and to make decisions on optional programming. Delays in decision making may have a significant impact on program funding.

Interpretations of broad or vague federal authorization may result in an increase in potentially costly appeals and litigation. There may be cost savings to State and local governments depending on how this Bill ultimately impacts rules promulgated by the departments. The potential savings cannot be determined.

**Sources**

Department of Education

Department of Human Services

Iowa League of Cities

Iowa Utilities Board – Department of Commerce

LSA Analysis

/s/ Holly M. Lyons

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March 18, 2013

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The fiscal note for this bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.

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